

MINNESOTA SENTENCING GUIDELINES COMMISSION

Sentencing Practices

Failure to Register Offenses Sentenced in 2011

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Minnesota Sentencing Guidelines Commission
309 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155

Voice: 651.296.0144 Fax: 651.297.5757
TTY: 1-800-627-3529, ask for 651.296.0144

Website: www.msgc.state.mn.us
E-mail: sentencing.guidelines@state.mn.us

Reports are available in alternative formats upon request.

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Summary of 2011 Data

In 2011, the number of offenders sentenced for failure to register (351) increased by almost four percent from the number sentenced in 2010 (338 offenders) (Figure 1). Although all failure-to-register offenses carry a mandatory minimum term of imprisonment, just over half of the offenders were sentenced to prison. The total incarceration rate was 94 percent: 56 percent receiving a prison sentence; and 39 percent receiving time in a local facility as a condition of probation (Table 1). The average pronounced prison sentence was roughly 20 months, which is the same average observed in 2010 (Table 2). Mitigated dispositional departure rates slightly decreased from 46 percent in 2010 to 44 percent in 2011. Mitigated durational departure rates also decreased from 40 percent in 2010 to 35 percent in 2011 (Table 4).

Presumptive Sentences for Failure to Register Offenses

Minn. Stat. § [243.166](#), sets forth the offenses of conviction under which an offender is required to register as a predatory offender. These include murder, kidnapping, criminal sexual conduct, indecent exposure, possession or dissemination of child pornography, and use or solicitation of a minor in various sex offenses. The statute makes failure to register a felony.

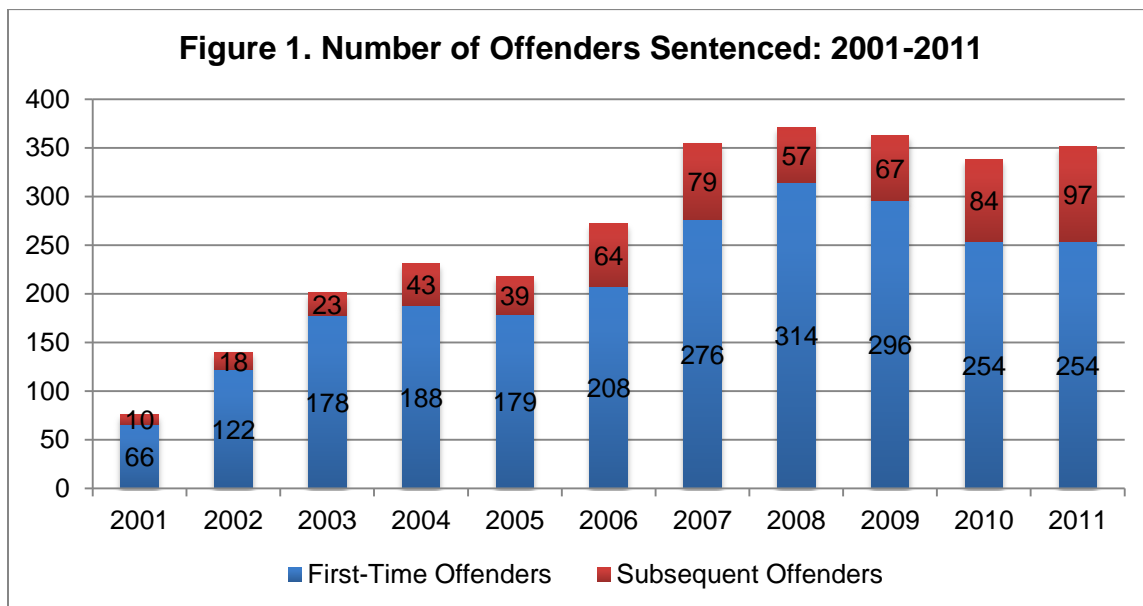
Beginning in August of 2000, the Legislature established a statutory mandatory minimum penalty of one year and one day in prison for a first offense and 24 months in prison for a subsequent offense.

Failure to register was an unranked offense (no severity level assigned) until August 1, 2003. Effective for crimes committed on or after that date, the Commission ranked first offenses at Severity Level 1 and subsequent offenses at Severity Level 3, based largely on the actual sentences being imposed for the crime. Offenses committed on or after August 1, 2006 are ranked at Severity Level H on the Sex Offender Grid. Of the 351 offenders sentenced in 2011, 343 (98%) were eligible for the presumptive sentences on the Sex Offender Grid.

Case Volume and Distribution¹

Volume of Cases

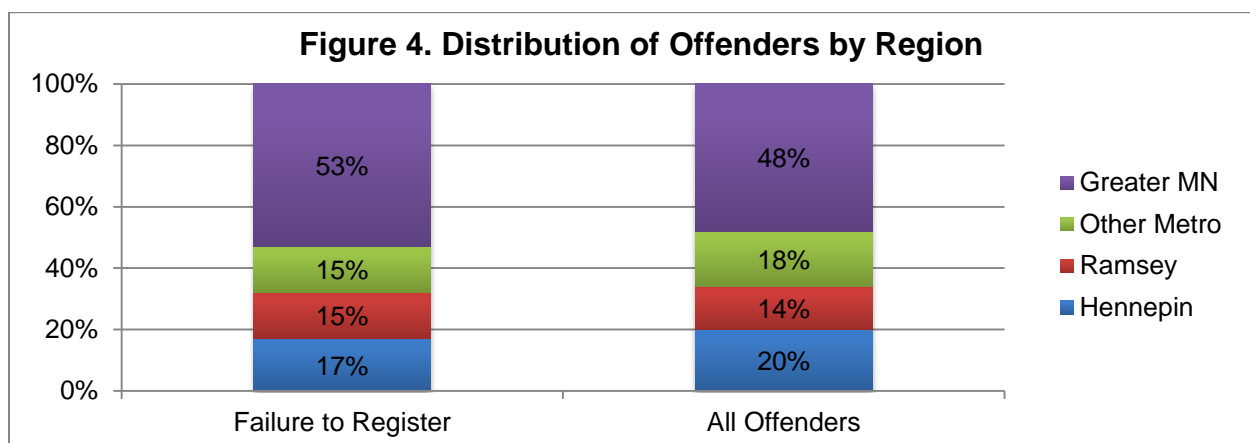
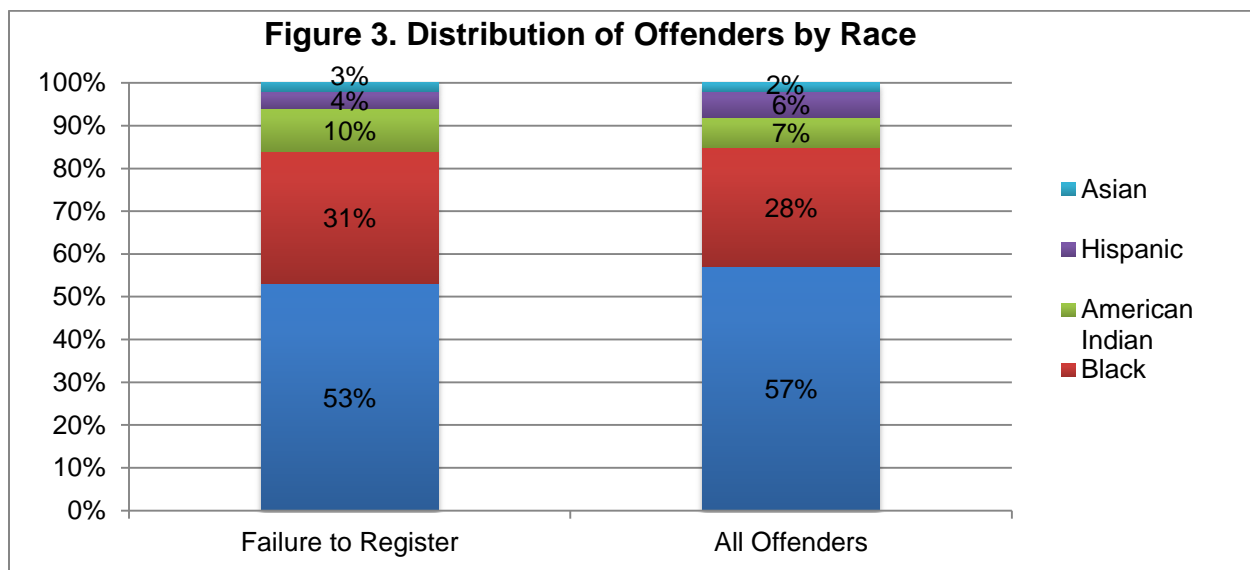
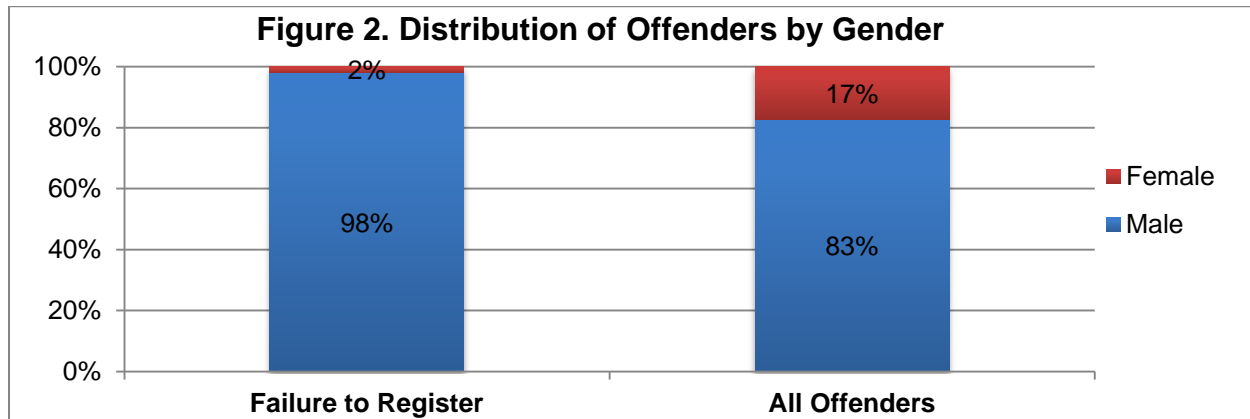
The number of offenders sentenced for failure to register increased in almost every year from 2001 to 2008. There were slight decreases in 2009 and 2010. In 2011, there was a slight increase of four percent from that in 2010. Of the 351 sentenced in 2011, 254 were first-time offenders and 97 were sentenced for a second or subsequent offense.



Demographic Characteristics

The average age for all felony offenders was 31 years old. When looking at failure-to-register offenders specifically, the average age for first-time offenders was 32 years old and the average age for offenders with a subsequent offense was 35 years old. Although the total felony population was about 83 percent male and 17 percent female, failure-to-register offenders were more likely to be male (98% male and 2% female) (Figure 2). The racial and geographic distributions of failure-to-register offenders were similar to the racial and geographic distributions for all felony offenders, except that failure-to-register offenders were slightly more likely to be American Indian and Black, and less likely to be White (Figure 3). The number of failure-to-register offenders sentenced was slightly higher in the Greater Minnesota region and slightly lower in Hennepin County and the Other Metro region (Figure 4).

¹ It should be noted that the Minnesota Sentencing Guidelines Commission (MSGC) monitoring data are offender-based, meaning cases represent offenders rather than individual charges. Offenders sentenced within the same county in a one-month period are generally counted only once, based on their most serious offense.



Sentencing Practices

Incarceration Rates

As mentioned above, failure to register offenses carry a statutory mandatory minimum penalty of one year and one day in prison for a first offense and 24 months in prison for a subsequent offense. Overall, 56 percent of failure-to-register offenders received prison sentences in 2011, an increase from the 2010 rate of 54 percent. Compared to those observed in 2010, imprisonment rates stayed the same for first-time offenders (48%), but increased for offenders sentenced for a second or subsequent conviction (76% in 2011 up from 70% in 2010). The local jail rate increased from about 42 percent for first-time offenders and from 25 percent for subsequent offenders in 2010. Overall, local conditional confinement time was imposed in 39 percent of the cases in 2011, which is slightly higher than the rate observed in 2010 (38%). Taking into account both conditional confinement following sentencing and prison, the total incarceration rate in 2011 was 94 percent: 93 percent for first-time offenders and 99 percent for subsequent offenders.

Table 1. Total Incarceration Rate

Type	# Offenders	Prison	Conditional Confinement	Other Sanctions
First-Time Offenders	254	121 (48%)	114(45%)	19 (8%)
Subsequent Offenders	97	74 (76%)	22 (23%)	1 (1%)
Total	351	195 (56%)	136 (39%)	20 (6%)

Table 2 displays the average pronounced durations for prison sentences and conditional confinement time for first-time and subsequent offenders according to the applicable Grid. The overall average prison sentence pronounced was 20 months, which is the same as the average pronounced prison sentence in 2010. Average pronounced prison sentences have increased with the implementation of the Sex Offender Grid for offenses that occur on or after August 1, 2006. Of the 195 offenders who received executed prison sentences in 2011, 190 (97%) were eligible for the presumptive sentences on the Sex Offender Grid rather than the Standard Grid.

Sentences on the Sex Offender Grid were higher than those on the Standard Grid for offenders with a Criminal History Score of 1 or more; this was particularly true for first-time offenders. For first-time offenders, the average pronounced sentence was about 15 months for offenders whose presumptive sentence was found on the Standard Grid and 19 months for offenders whose presumptive sentence was found on the Sex Offender Grid. In 2011, all but one of the subsequent offenders were subject to the presumptive sentence found on the Sex Offender Grid, and the average pronounced prison sentence was 22 months.

**Table 2. Average Pronounced Durations:
By Grid and First or Subsequent Offense**

	Grid	Prison	Conditional Confinement
First-Time Offenders	Standard Grid	15 months	225 days
	Sex Offender Grid	19 months	120 days
	Total	18 months	122 days
Subsequent Offenders	Standard Grid ²	24 months	----
	Sex Offender Grid	22 months	141 days
	Total	22 months	141 days
Total – All Offenders		20 months	125 days

²It should be noted that there were no subsequent offenders sentenced on the Standard Grid that received conditional confinement.

Departure Rates

Departure information is presented for first-time and subsequent offenders. The Guidelines establish a presumptive sentence for felony offenses based on the severity of the offense and the offender's criminal history score. The presumptive sentence is based on the typical case, however, the court may depart from the Guidelines when substantial and compelling circumstances exist. A "departure" is a pronounced sentence other than that recommended in the appropriate cell of the applicable Grid. There are two types of departures – dispositional and durational – as further explained below. Since the presumptive sentence is based on "the typical case," the appropriate use of departures by the courts when substantial and compelling circumstances exist can actually enhance proportionality by varying the sanction in an atypical case.

While the court ultimately makes the sentencing decision, other criminal justice professionals and victims participate in the decision-making process. Probation officers make recommendations to the courts regarding whether a departure from the presumptive sentence is appropriate, and prosecutors and defense attorneys arrive at agreements regarding acceptable sentences for which an appeal will not be pursued. Victims are provided an opportunity to comment regarding the appropriate sentence as well. Therefore, these departure statistics should be reviewed with an understanding that, when the court pronounces a particular sentence, there is typically agreement or acceptance among the other actors that the sentence is appropriate. Only a small percent of cases (1% to 2%) result in an appeal of the sentence pronounced by the court.

Dispositional Departures

A "dispositional departure" occurs when the court orders a disposition other than that recommended in the Guidelines. There are two types of dispositional departures: aggravated dispositional departures and mitigated dispositional departures. An aggravated dispositional departure occurs when the Guidelines recommend a stayed sentence but the court pronounces a prison sentence. A mitigated dispositional departure occurs when the Guidelines recommend a prison sentence but the court pronounces a stayed sentence.

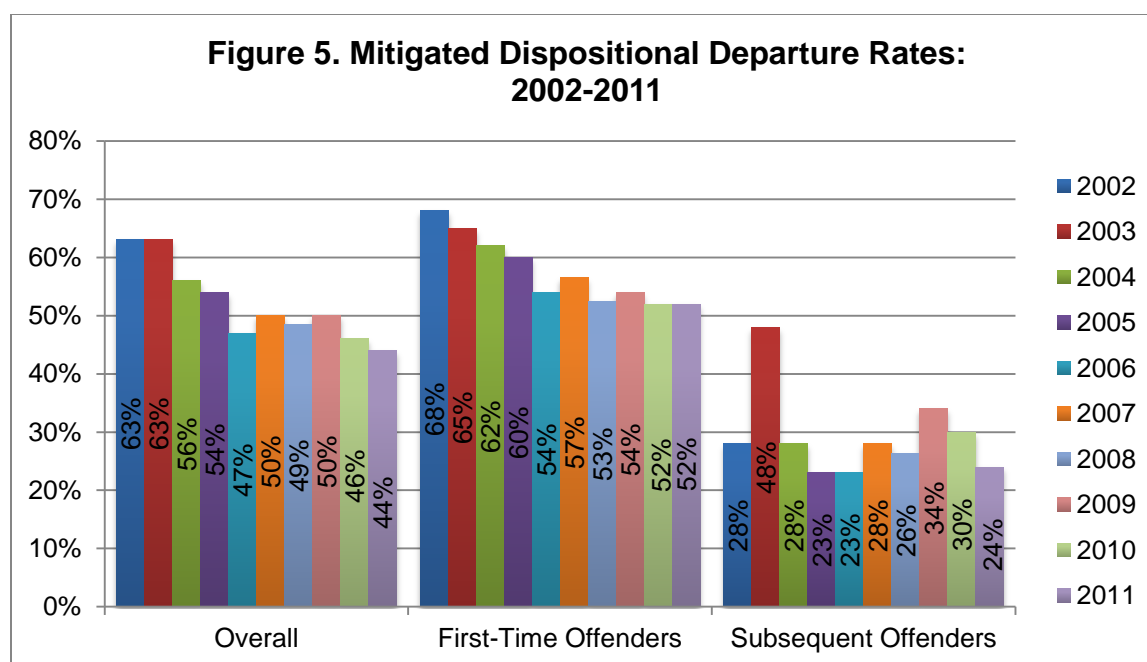
Minn. Stat. § 243.166, subd. 5(a) through (c) sets forth a mandatory period of incarceration in a state correctional facility for a conviction for failure to register. Minn. Stat. § 243.166, subd. 5(d) allows sentencing without regard to the mandatory minimum and provides that such a sentence is considered a departure from the Guidelines.

In 2011, 44 percent of the offenders sentenced received a non-prison sentence as the result of a mitigated dispositional departure, with first-time offenders receiving dispositional departures at a higher rate of 52 percent.

Table 3. Dispositional Departure Rates

Type	# Offenders	Prison	Mitigated Dispositional Departure
First-Time Offenders	254	122 (48%)	132 (52%)
Subsequent Offenders	97	74 (76%)	23 (24%)
Total	351	195 (56%)	155 (44%)

The mitigated dispositional departure rate in 2011 stayed the same for first-time offenders and decreased for subsequent offenders. Figure 5 displays the mitigated dispositional departure rates from 2002 through 2011. The 2011 overall rate was the lowest ever observed.



Durational Departures

A “durational departure” occurs when the court orders a sentence with a duration other than the presumptive fixed duration or range in the appropriate cell on the applicable Grid. There are two types of durational departures: aggravated durational departures and mitigated durational departures. An aggravated durational departure occurs when the court pronounces a duration that is more than 20 percent higher than the fixed duration displayed in the appropriate cell on the applicable Grid. A mitigated durational departure occurs when the court pronounces a

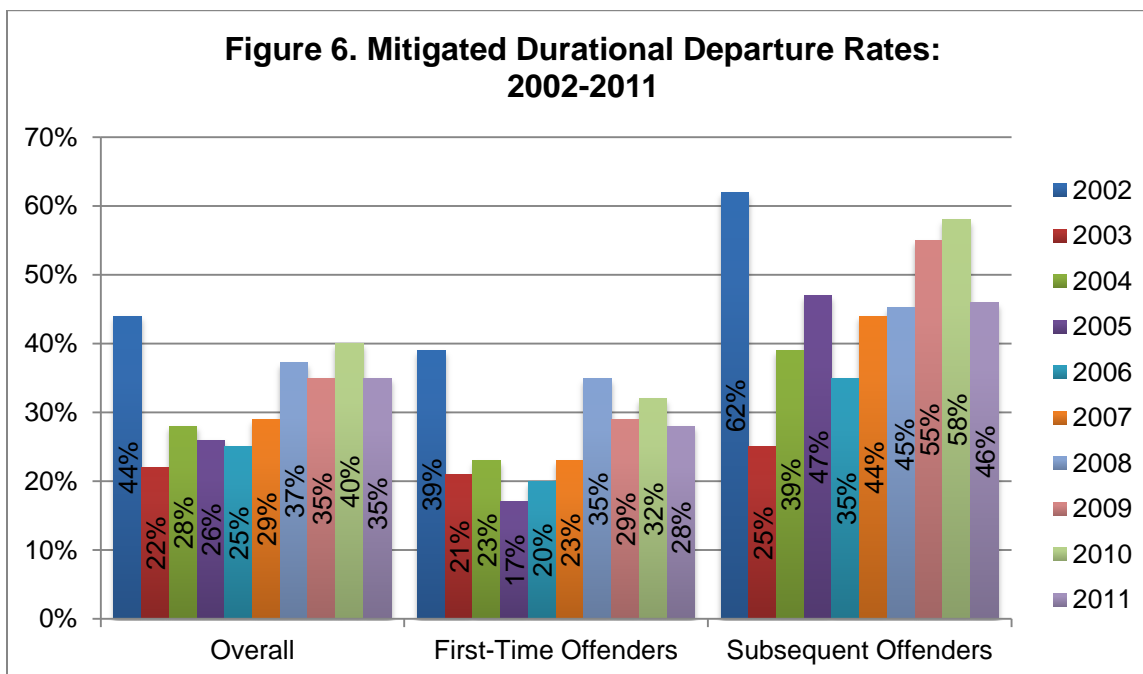
sentence that is more than 15 percent lower than the fixed duration displayed in the appropriate cell on the applicable Grid.

Of the offenders who received the mandatory prison sentence, 35 percent received a mitigated durational departure in which the offender was sentenced to less time in prison than recommended by the guidelines. Subsequent offenders had higher durational departure rates (46%) than first-time offenders (28%). Offenders with presumptive sentences on the sex offender grid had a mitigated durational departure rate of 35 percent. There were only five offenders with presumptive sentences on the Standard Grid, two of which received a mitigated durational departure. The following table displays the mitigated durational departure rates for prison sentences for first-time and subsequent offenders according to the applicable Grid.

**Table 4. Durational Departure Rates for Prison Sentences:
By Grid and First or Subsequent Offense**

	Grid	# Prison Sentences	Mitigated Durational Departure
First-Time Offenders	Standard Grid	4	2 (50%)
	Sex Offender Grid	117	32(27%)
	Total	121	34 (28%)
Subsequent Offenders	Standard Grid	1	0
	Sex Offender Grid	73	34 (47%)
	Total	74	34 (46%)
Total – All Offenders		195	68 (35%)

The mitigated durational departure rate decreased for both first-time offenders and subsequent offenders in 2011 from the rates observed in 2010. Figure 6 displays the mitigated durational departure rates from 2002 through 2011. Aggravated durational departures are infrequent in each year, so no trend information is provided on these departures. There were no aggravated durational departures in 2011.



Departure Reasons

Mitigated Dispositions

In 2011, dispositional departures occurred in 44 percent of the cases sentenced. Of the 155 cases that received mitigated dispositional departures, 102 (66%) resulted from a plea agreement in which the prosecutor recommended or did not object to the sentence.

Table 5. Plea Information for Offenders Receiving Dispositional Departures

Position of Prosecutor, as Cited by Court in Departure Report				
	Number of Mitigated Dispositions	Plea Agreement or Prosecutor Recommends/ Does Not Object	Prosecutor Objects	No Information Given
First-Time Offenders	132	90 (68%)	15 (11%)	27 (21%)
Subsequent Offenders	23	12 (52%)	4 (17%)	7 (30%)
Total	155	102 (66%)	19 (12%)	34 (22%)

Listed below is a summary of the reasons stated for the imposition of mitigated dispositional departures. The most frequently-cited reason (other than plea agreement) was that the offender was “amenable to probation” (55%), followed by “offender showed remorse” (34%) and “offense was less onerous” than the typical offense (23%). These were the same departure reasons that were most frequently cited in the 2001-2010 departure data.

Table 6. Frequently Cited Departure Reasons for Dispositional Departures

Departure Reasons	Number of Cases	Percentage of All Dispositional Departures
Amenable to Probation	85	55%
Shows Remorse/Accepts Responsibility	53	34%
Offense Less Onerous than Typical	36	23%
Recommended by Court Services	11	7%
Ensure Compliance with Conditions of Probation	20	13%
Amenable to Treatment	30	19%
Lacked Substantial or Reasonable Capacity for Judgment	5	3%
Failure to Register Prior Less Serious or Old	7	5%

Durational Departures

For offenders sentenced to prison, 35 percent received mitigated durational departures. In 77 percent of the mitigated durational departure cases, the prosecutor either recommended or did not object to the departure. The reasons most frequently cited for mitigated durational departures were: “shows remorse/accepts responsibility” and “crime less onerous than usual.”

Table 7. Plea Information for Offenders that Received Durational Departures (Executed Sentences Only)

	Position of Prosecutor as Cited by Court in Departure Report				
		Number of Durational Departures	Plea Agreement or Prosecutor Recommends / Does Not Object	Prosecutor Objects	No Information Given
Mitigated Departures	First-Time Offenders	34	25 (74%)	2 (6%)	7 (21%)
	Subsequent Offenders	34	27 (79%)	3 (9%)	4 (12%)
	Total	68	52 (77%)	5 (7%)	11 (16%)

Table 8. Frequently Cited Departure Reasons for Durational Departures

	Departure Reason	Number of Cases	Percentage of Durational Departures
Mitigated Departures	Shows Remorse/Accepts Responsibility	33	49%
	Offense Less Onerous than Typical Offense	16	24%
	Judicial Efficiency/Save on Cost of Trial and Other Costs	6	9%

How the Guidelines Work

Minnesota's Guidelines are based on a grid structure. The vertical axis of the grid represents the severity of the offense for which the offender was convicted. The horizontal axis represents a measure of the offender's criminal history. The Commission has ranked felony level offenses into eleven severity levels. Offenses included in each severity level are listed in the Offense Severity Reference Table (2012 Minn. Sentencing Guidelines § 5.A).

The criminal history index measures the offender's prior record and consists of four measures of prior criminal behavior: (1) a weighted measure of prior felony sentences; (2) a limited measure of prior misdemeanor/gross misdemeanor sentences; (3) a limited measure of the prior serious juvenile record; and (4) a "custody status" measure which indicates if the offender was confined, or was on probation or parole when the current offense was committed.

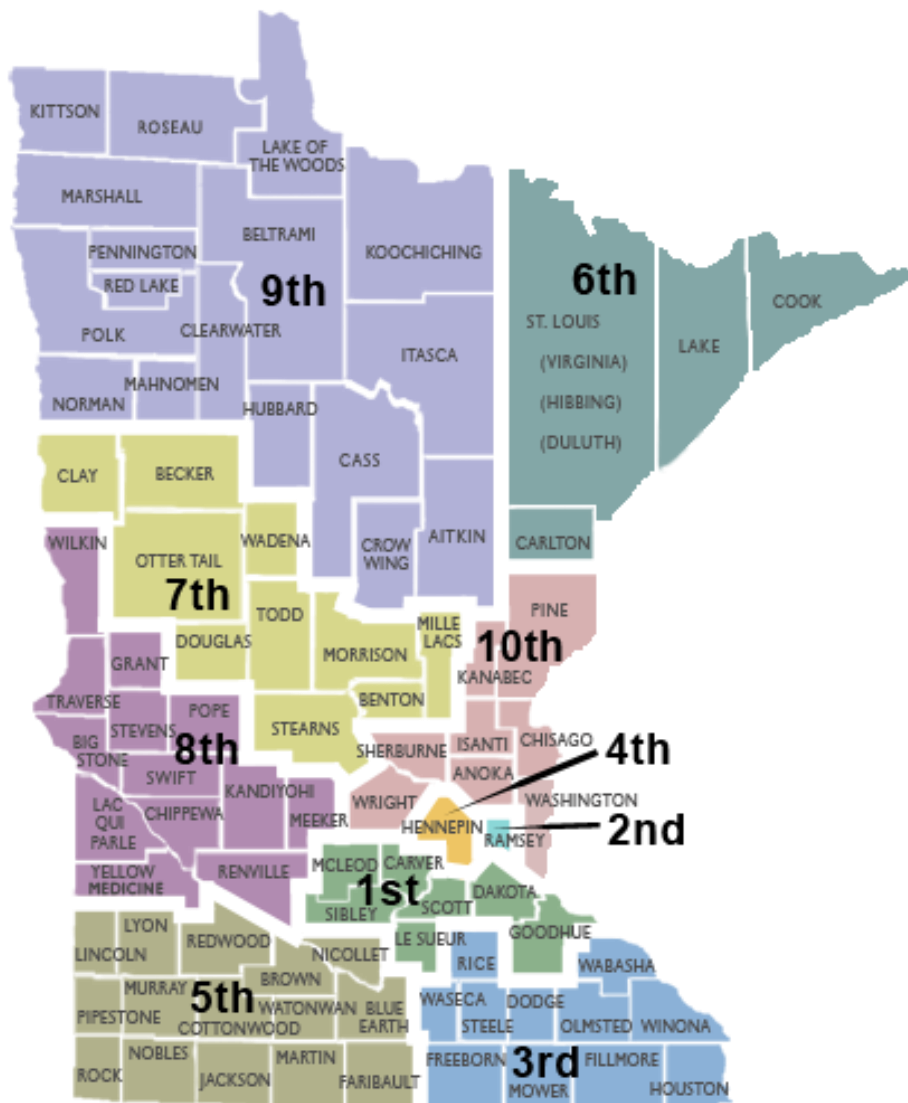
The recommended (presumptive) Guideline sentence is found in the appropriate cell of the applicable Grid in which the offender's criminal history score and severity level intersect. The Guidelines recommend imprisonment in a state prison in the non-shaded cells of the Grid.

The Guidelines generally recommend a stayed sentence for cells in the shaded areas. When a sentence is stayed, the court typically places the offender on probation and may require up to one year of conditional confinement in a local correctional facility (jail or workhouse). Other conditions such as fines, restitution, community work service, treatment, house arrest, etc. may also be applied to an offender's sentence. There are, however, a number of offenses that carry a presumptive prison sentence regardless of where the offender is on the Grid (e.g., offenses involving dangerous weapons which carry mandatory minimum prison terms, and drug and burglary offenses).

The number in the cell is the recommended length of the prison sentence in months. As explained above, sentences in shaded boxes are generally stayed probationary sentences. For cases in the non-shaded cells of the Grid, the Guidelines also provide a narrow range of months around the presumptive duration that a judge may pronounce and still be within the Guidelines.

It is not possible to fully explain all of the policies in this brief summary. Additional information on the Guidelines is available by contacting the Commission's office. The *Minnesota Sentencing Guidelines and Commentary* is available online at <http://www.msgc.state.mn.us>.

Minnesota Judicial District Map




<u>First</u>	<u>Second</u>	<u>Third</u>	<u>Fourth</u>	<u>Fifth</u>	<u>Sixth</u>	<u>Seventh</u>	<u>Eighth</u>	<u>Ninth</u>	<u>Tenth</u>
Carver	Ramsey	Dodge	Hennepin	Blue Earth	Carlton	Becker	Big Stone	Aitkin	Anoka
Dakota		Fillmore		Brown	Cook	Benton	Chippewa	Beltrami	Chisago
Goodhue		Freeborn		Cottonwood	Lake	Clay	Grant	Cass	Isanti
LeSueur		Houston		Faribault	St. Louis	Douglas	Kandiyohi	Clearwater	Kanabec
McLeod		Mower		Jackson		Mille Lacs	LacQuiParle	Crow Wing	Pine
Scott		Olmsted		Lincoln		Morrison	Meeker	Hubbard	Sherburne
Sibley		Rice		Lyon		Otter Tail	Pope	Itasca	Washington
		Steele		Martin		Stearns	Renville	Kittson	Wright
		Wabasha		Murray		Todd	Swift	Koochiching	
		Waseca		Nicollet		Wadena	Traverse	Lake-Woods	
		Winona		Nobles			Wilkin	Mahnomen	
				Pipestone			Yellow Medicine	Marshall	
				Redwood				Norman	
				Rock				Pennington	
				Watonwan				Polk	
								Red Lake	
								Roseau	


Minnesota Judicial Branch at <http://mncourts.gov/?page=238>

Sentencing Guidelines Grid – Effective August 1, 2012

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in <i>italics</i>)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree</i> (<i>intentional murder; drive-by-shootings</i>)	11	306 <i>261-367</i>	326 <i>278-391</i>	346 <i>295-415</i>	366 <i>312-439</i>	386 <i>329-463</i>	406 <i>346-480</i> ²	426 <i>363-480</i> ²
<i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree</i> (<i>unintentional murder</i>)	10	150 <i>128-180</i>	165 <i>141-198</i>	180 <i>153-216</i>	195 <i>166-234</i>	210 <i>179-252</i>	225 <i>192-270</i>	240 <i>204-288</i>
<i>Assault, 1st Degree</i> <i>Controlled Substance Crime,</i> <i>1st Degree</i>	9	86 <i>74-103</i>	98 <i>84-117</i>	110 <i>94-132</i>	122 <i>104-146</i>	134 <i>114-160</i>	146 <i>125-175</i>	158 <i>135-189</i>
<i>Aggravated Robbery, 1st Degree</i> <i>Controlled Substance Crime,</i> <i>2nd Degree</i>	8	48 <i>41-57</i>	58 <i>50-69</i>	68 <i>58-81</i>	78 <i>67-93</i>	88 <i>75-105</i>	98 <i>84-117</i>	108 <i>92-129</i>
<i>Felony DWI</i>	7	36	42	48	54 <i>46-64</i>	60 <i>51-72</i>	66 <i>57-79</i>	72 <i>62-84</i> ²
<i>Controlled Substance Crime,</i> <i>3rd Degree</i>	6	21	27	33	39 <i>34-46</i>	45 <i>39-54</i>	51 <i>44-61</i>	57 <i>49-68</i>
<i>Residential Burglary</i> <i>Simple Robbery</i>	5	18	23	28	33 <i>29-39</i>	38 <i>33-45</i>	43 <i>37-51</i>	48 <i>41-57</i>
<i>Nonresidential Burglary</i>	4	12 ¹	15	18	21	24 <i>21-28</i>	27 <i>23-32</i>	30 <i>26-36</i>
<i>Theft Crimes (Over \$5,000)</i>	3	12 ¹	13	15	17	19 <i>17-22</i>	21 <i>18-25</i>	23 <i>20-27</i>
<i>Theft Crimes (\$5,000 or less)</i> <i>Check Forgery (\$251-\$2,500)</i>	2	12 ¹	12 ¹	13	15	17	19	21 <i>18-25</i>
<i>Sale of Simulated</i> <i>Controlled Substance</i>	1	12 ¹	12 ¹	12 ¹	13	15	17	19 <i>17-22</i>

 Presumptive commitment to state imprisonment. First-degree murder has a mandatory life sentence and is excluded from the Guidelines under Minn. Stat. § 609.185. See Guidelines section 2.E. Mandatory Sentences, for policies regarding those sentences controlled by law.

 Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in the shaded area of the Grid always carry a presumptive commitment to state prison. Guidelines sections 2.C. Presumptive Sentence and 2.E. Mandatory Sentences.

12¹=One year and one day

² Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. Guidelines section 2.C.1-2. Presumptive Sentence.

Sex Offender Grid – Effective August 1, 2012

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

CRIMINAL HISTORY SCORE

SEVERITY LEVEL OF CONVICTION OFFENSE		0	1	2	3	4	5	6 or More
CSC 1 st Degree	A	144 144-172	156 144-187	168 144-201	180 153-216	234 199-280	306 261-360	360 306-360 ²
CSC 2 nd Degree— (c)(d)(e)(f)(h) Prostitution; Sex Trafficking ³ 1 st Degree—1(a)	B	90 90 ³ -108	110 94-132	130 111-156	150 128-180	195 166-234	255 217-300	300 255-300 ²
CSC 3 rd Degree—(c)(d) (g)(h)(i)(j)(k)(l)(m)(n)(o) Prostitution; Sex Trafficking 2 nd Degree—1a	C	48 41-57	62 53-74	76 65-91	90 77-108	117 100-140	153 131-180	180 153-180 ²
CSC 2 nd Degree—(a)(b)(g) CSC 3 rd Degree—(a)(b) ² (e)(f) Dissemination of Child Pornography (Subsequent or by Predatory Offender)	D	36	48	60 51-72	70 60-84	91 78-109	119 102-142	140 119-168
CSC 4 th Degree—(c)(d) (g)(h)(i)(j)(k)(l)(m)(n)(o) Use Minors in Sexual Performance Dissemination of Child Pornography ²	E	24	36	48	60 51-72	78 67-93	102 87-120	120 102-120 ²
CSC 4 th Degree— (a)(b)(e)(f) Possession of Child Pornography (Subsequent or by Predatory Offender)	F	18	27	36	45 39-54	59 51-70	77 66-92	84 72-100
CSC 5 th Degree Indecent Exposure Possession of Child Pornography Solicit Children for Sexual Conduct ²	G	15	20	25	30	39 34-46	51 44-60	60 51-60 ²
Registration Of Predatory Offenders	H	12 ¹ 12 ¹ -14	14 12 ¹ -16	16 14-19	18 16-21	24 21-28	30 26-36	36 31-43



Presumptive commitment to state imprisonment. Sex offenses under Minn. Stat. § 609.3455, subd. 2, have mandatory life sentences and are excluded from the Guidelines. See Guidelines section 2.E. Mandatory Sentences, for policies regarding those sentences controlled by law, including conditional release terms for sex offenders.



Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenders in the shaded area of the Grid may qualify for a mandatory life sentence under Minn. Stat. § 609.3455, subd. 4. Guidelines sections 2.C. Presumptive Sentence and 2.E. Mandatory Sentences.

12¹=One year and one day

² Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. Guidelines section 2.C.1-2. Presumptive Sentence.

³ Prostitution; Sex Trafficking is not subject to a 90-month minimum statutory presumptive sentence so the standard range of 15% lower and 20% higher than the fixed duration applies. (The range is 77-108.)